

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

WAVE NEUROSCIENCE, INC. a Delaware
Corporation,

Plaintiff,

vs.

BRAIN FREQUENCY LLC, a Texas Limited
Liability Company

Defendant.

Case No. 5:23-CV-00626-XR

Honorable: Xavier Rodriguez

**[CORRECTED] MOTION TO FILE SECOND AMENDED COMPLAINT WITH
WRITTEN CONSENT OF OPPOSING PARTY [FRCP 15(a)(2)]**

Pursuant to Federal Rule of Civil Procedure Rule 15(a)(2), Plaintiff Wave Neuroscience, Inc. (“Wave”) files this motion to file an amended pleading with the written consent of the opposing party.

On May 15, 2023, Wave filed this patent infringement action against Brain Frequency LLC and Windmill Wellness Ranch LLC. ECF No. 1.

Following filing of the Complaint, the parties met and conferred and Wave agreed to voluntarily dismiss Windmill Wellness Ranch LLC from this action without prejudice. Accordingly, on August 10, 2023, Wave exercised its right to file an amended pleading without leave pursuant to Federal Rule of Civil Procedure Rule 15(a)(1). ECF No. 5. Wave’s First Amended Complaint named Brain Frequency LLC as the sole defendant. *See, id.*

On August 14, 2023, Brain Frequency LLC waived service of summons. ECF No. 6. As a result, Brain Frequency LLC’s response to the First Amended Complaint is due on or before October 13, 2023.

The parties have further met and conferred and agreed that Wave may file a Second Amended Complaint to dismiss claims for infringement of U.S. Patent No. 9,015,057 and U.S. Patent No. 11,311,741 and instead assert claims for infringement of U.S. Patent No. 8,465,408 and U.S. Patent No. 8,870,737.

Brain Frequency LLC consents in writing to the filing of Wave's proposed Second Amended Complaint through the signature of its counsel below. A true and correct copy of Wave's proposed Second Amended Complaint is attached hereto as Exhibit 1.

Wave respectfully requests that the Court grant this motion and deem its proposed Second Amended Complaint filed as of the date this motion is granted. Brain Frequency LLC will respond to the Second Amended Complaint within 30 days of the Court granting this motion.

Dated: October 13, 2023

Respectfully submitted,

/s/ Harry L. Gillam, Jr.

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Attorneys for Plaintiff
WAVE NEUROSCIENCE, INC.

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that counsel for Plaintiff met and conferred with counsel for Defendant to discuss the substantive issues addressed in this Motion. Counsel for Defendant indicated that Defendant is unopposed to the relief sought in this Motion.

/s/ Harry L. Gillam, Jr.
Harry L. Gillam, Jr.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that counsel of record who are deemed to have consented to electronic services are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a) on October 13, 2023.

/s/ Harry L. Gillam, Jr.
Harry L. Gillam, Jr.

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